

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2526

Introduced by Assembly Member Achadjian

February 19, 2016

An act to amend Section ~~1793.22~~ 1793.2 of the Civil Code, relating to consumer protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2526, as amended, Achadjian. Consumer ~~protection~~. goods: warranties: motor vehicle replacement.

Existing law requires a manufacturer of consumer goods sold in this state for which the manufacturer has made an express warranty to maintain sufficient service and repair facilities reasonably close where its goods are sold to carry out the terms of those warranties or to designate and authorize independent repair or service facilities to fulfill this purpose. Existing law requires a manufacturer that is unable to service or repair a new motor vehicle to conform to the express warranties after a reasonable number of attempts to replace the vehicle or promptly make restitution. Existing law requires a manufacturer, in the case of a replacement, to also pay other specified costs, including reasonable repair, towing, and rental car costs actually incurred by the buyer.

This bill, in the case of a new motor vehicle replacement as described above, would require the manufacturer to pay the lesser of reasonable repair, towing, and rental car costs and those costs actually incurred by the buyer.

~~Existing law, the Tanner Consumer Protection Act, establishes a presumption that a reasonable number of attempts have been made to~~

~~conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery or 18,000 miles on the odometer, whichever occurs first, one or more conditions occur.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1793.2 of the Civil Code is amended to*
2 *read:*

3 1793.2. (a) Every manufacturer of consumer goods sold in
4 this state and for which the manufacturer has made an express
5 warranty shall:

6 (1) (A) Maintain in this state sufficient service and repair
7 facilities reasonably close to all areas where its consumer goods
8 are sold to carry out the terms of those warranties or designate and
9 authorize in this state as service and repair facilities independent
10 repair or service facilities reasonably close to all areas where its
11 consumer goods are sold to carry out the terms of the warranties.

12 (B) As a means of complying with this paragraph, a
13 manufacturer may enter into warranty service contracts with
14 independent service and repair facilities. The warranty service
15 contracts may provide for a fixed schedule of rates to be charged
16 for warranty service or warranty repair work. However, the rates
17 fixed by those contracts shall be in conformity with the
18 requirements of subdivision (c) of Section 1793.3. The rates
19 established pursuant to subdivision (c) of Section 1793.3, between
20 the manufacturer and the independent service and repair facility,
21 do not preclude a good faith discount that is reasonably related to
22 reduced credit and general overhead cost factors arising from the
23 manufacturer's payment of warranty charges direct to the
24 independent service and repair facility. The warranty service
25 contracts authorized by this paragraph may not be executed to
26 cover a period of time in excess of one year, and may be renewed
27 only by a separate, new contract or letter of agreement between
28 the manufacturer and the independent service and repair facility.

29 (2) In the event of a failure to comply with paragraph (1) of this
30 subdivision, be subject to Section 1793.5.

1 (3) Make available to authorized service and repair facilities
2 sufficient service literature and replacement parts to effect repairs
3 during the express warranty period.

4 (b) Where those service and repair facilities are maintained in
5 this state and service or repair of the goods is necessary because
6 they do not conform with the applicable express warranties, service
7 and repair shall be commenced within a reasonable time by the
8 manufacturer or its representative in this state. Unless the buyer
9 agrees in writing to the contrary, the goods shall be serviced or
10 repaired so as to conform to the applicable warranties within 30
11 days. Delay caused by conditions beyond the control of the
12 manufacturer or its representatives shall serve to extend this 30-day
13 requirement. Where delay arises, conforming goods shall be
14 tendered as soon as possible following termination of the condition
15 giving rise to the delay.

16 (c) The buyer shall deliver nonconforming goods to the
17 manufacturer's service and repair facility within this state, unless,
18 due to reasons of size and weight, or method of attachment, or
19 method of installation, or nature of the nonconformity, delivery
20 cannot reasonably be accomplished. If the buyer cannot return the
21 nonconforming goods for any of these reasons, he or she shall
22 notify the manufacturer or its nearest service and repair facility
23 within the state. Written notice of nonconformity to the
24 manufacturer or its service and repair facility shall constitute return
25 of the goods for purposes of this section. Upon receipt of that
26 notice of nonconformity, the manufacturer shall, at its option,
27 service or repair the goods at the buyer's residence, or pick up the
28 goods for service and repair, or arrange for transporting the goods
29 to its service and repair facility. All reasonable costs of transporting
30 the goods when a buyer cannot return them for any of the above
31 reasons shall be at the manufacturer's expense. The reasonable
32 costs of transporting nonconforming goods after delivery to the
33 service and repair facility until return of the goods to the buyer
34 shall be at the manufacturer's expense.

35 (d) (1) Except as provided in paragraph (2), if the manufacturer
36 or its representative in this state does not service or repair the goods
37 to conform to the applicable express warranties after a reasonable
38 number of attempts, the manufacturer shall either replace the goods
39 or reimburse the buyer in an amount equal to the purchase price

1 paid by the buyer, less that amount directly attributable to use by
2 the buyer prior to the discovery of the nonconformity.

3 (2) If the manufacturer or its representative in this state is unable
4 to service or repair a new motor vehicle, as that term is defined in
5 paragraph (2) of subdivision (e) of Section 1793.22, to conform
6 to the applicable express warranties after a reasonable number of
7 attempts, the manufacturer shall either promptly replace the new
8 motor vehicle in accordance with subparagraph (A) or promptly
9 make restitution to the buyer in accordance with subparagraph (B).
10 However, the buyer shall be free to elect restitution in lieu of
11 replacement, and in no event shall the buyer be required by the
12 manufacturer to accept a replacement vehicle.

13 (A) In the case of replacement, the manufacturer shall replace
14 the buyer's vehicle with a new motor vehicle substantially identical
15 to the vehicle replaced. The replacement vehicle shall be
16 accompanied by all express and implied warranties that normally
17 accompany new motor vehicles of that specific kind. The
18 manufacturer also shall pay for, or to, the buyer the amount of any
19 sales or use tax, license fees, registration fees, and other official
20 fees which the buyer is obligated to pay in connection with the
21 replacement, plus any incidental damages to which the buyer is
22 entitled under Section 1794, including, but not limited to, *the lesser*
23 *of* reasonable repair, towing, and rental car costs *and those costs*
24 actually incurred by the buyer.

25 (B) In the case of restitution, the manufacturer shall make
26 restitution in an amount equal to the actual price paid or payable
27 by the buyer, including any charges for transportation and
28 manufacturer-installed options, but excluding nonmanufacturer
29 items installed by a dealer or the buyer, and including any collateral
30 charges such as sales or use tax, license fees, registration fees, and
31 other official fees, plus any incidental damages to which the buyer
32 is entitled under Section 1794, including, but not limited to,
33 reasonable repair, towing, and rental car costs actually incurred
34 by the buyer.

35 (C) When the manufacturer replaces the new motor vehicle
36 pursuant to subparagraph (A), the buyer shall only be liable to pay
37 the manufacturer an amount directly attributable to use by the
38 buyer of the replaced vehicle prior to the time the buyer first
39 delivered the vehicle to the manufacturer or distributor, or its
40 authorized service and repair facility for correction of the problem

that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(D) Pursuant to Section 1795.4, a buyer of a new motor vehicle shall also include a lessee of a new motor vehicle.

(e) (1) If the goods cannot practicably be serviced or repaired by the manufacturer or its representative to conform to the applicable express warranties because of the method of installation or because the goods have become so affixed to real property as to become a part thereof, the manufacturer shall either replace and install the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, including installation costs, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) With respect to claims arising out of deficiencies in the construction of a new residential dwelling, paragraph (1) shall not apply to either of the following:

(A) A product that is not a manufactured product, as defined in subdivision (g) of Section 896.

(B) A claim against a person or entity that is not the manufacturer that originally made the express warranty for that manufactured product.

~~SECTION 1. Section 1793.22 of the Civil Code is amended to read:~~

1 ~~1793.22. (a) This section shall be known, and may be cited~~
2 ~~as, the Tanner Consumer Protection Act.~~

3 ~~(b) It shall be presumed that a reasonable number of attempts~~
4 ~~have been made to conform a new motor vehicle to the applicable~~
5 ~~express warranties if, within 18 months from delivery to the buyer~~
6 ~~or 18,000 miles on the odometer of the vehicle, whichever occurs~~
7 ~~first, one or more of the following conditions occur:~~

8 ~~(1) The same nonconformity results in a condition that is likely~~
9 ~~to cause death or serious bodily injury if the vehicle is driven and~~
10 ~~the nonconformity has been subject to repair two or more times~~
11 ~~by the manufacturer or its agents, and the buyer or lessee has at~~
12 ~~least once directly notified the manufacturer of the need for the~~
13 ~~repair of the nonconformity.~~

14 ~~(2) The same nonconformity has been subject to repair four or~~
15 ~~more times by the manufacturer or its agents and the buyer has at~~
16 ~~least once directly notified the manufacturer of the need for the~~
17 ~~repair of the nonconformity.~~

18 ~~(3) The vehicle is out of service by reason of repair of~~
19 ~~nonconformities by the manufacturer or its agents for a cumulative~~
20 ~~total of more than 30 calendar days since delivery of the vehicle~~
21 ~~to the buyer. The 30-day limit shall be extended only if repairs~~
22 ~~cannot be performed due to conditions beyond the control of the~~
23 ~~manufacturer or its agents. The buyer shall be required to directly~~
24 ~~notify the manufacturer pursuant to paragraphs (1) and (2) only if~~
25 ~~the manufacturer has clearly and conspicuously disclosed to the~~
26 ~~buyer, with the warranty or the owner's manual, the provisions of~~
27 ~~this section and that of subdivision (d) of Section 1793.2, including~~
28 ~~the requirement that the buyer must notify the manufacturer directly~~
29 ~~pursuant to paragraphs (1) and (2). The notification, if required,~~
30 ~~shall be sent to the address, if any, specified clearly and~~
31 ~~conspicuously by the manufacturer in the warranty or owner's~~
32 ~~manual. This presumption shall be a rebuttable presumption~~
33 ~~affecting the burden of proof, and it may be asserted by the buyer~~
34 ~~in any civil action, including an action in small claims court, or~~
35 ~~other formal or informal proceeding.~~

36 ~~(c) If a qualified third-party dispute resolution process exists,~~
37 ~~and the buyer receives timely notification in writing of the~~
38 ~~availability of that qualified third-party dispute resolution process~~
39 ~~with a description of its operation and effect, the presumption in~~
40 ~~subdivision (b) may not be asserted by the buyer until after the~~

1 buyer has initially resorted to the qualified third-party dispute
2 resolution process as required in subdivision (d). Notification of
3 the availability of the qualified third-party dispute resolution
4 process is not timely if the buyer suffers any prejudice resulting
5 from any delay in giving the notification. If a qualified third-party
6 dispute resolution process does not exist, or if the buyer is
7 dissatisfied with that third-party decision, or if the manufacturer
8 or its agent neglects to promptly fulfill the terms of the qualified
9 third-party dispute resolution process decision after the decision
10 is accepted by the buyer, the buyer may assert the presumption
11 provided in subdivision (b) in an action to enforce the buyer's
12 rights under subdivision (d) of Section 1793.2. The findings and
13 decision of a qualified third-party dispute resolution process shall
14 be admissible in evidence in the action without further foundation.
15 Any period of limitation of actions under any federal or California
16 laws with respect to any person shall be extended for a period
17 equal to the number of days between the date a complaint is filed
18 with a third-party dispute resolution process and the date of its
19 decision or the date before which the manufacturer or its agent is
20 required by the decision to fulfill its terms if the decision is
21 accepted by the buyer, whichever occurs later.

22 (d) A qualified third-party dispute resolution process shall be
23 one that does all of the following:

24 (1) Complies with the minimum requirements of the Federal
25 Trade Commission for informal dispute settlement procedures as
26 set forth in Part 703 of Title 16 of the Code of Federal Regulations,
27 as those regulations read on January 1, 1987.

28 (2) Renders decisions which are binding on the manufacturer
29 if the buyer elects to accept the decision.

30 (3) Prescribes a reasonable time, not to exceed 30 days after the
31 decision is accepted by the buyer, within which the manufacturer
32 or its agent must fulfill the terms of its decisions.

33 (4) Provides arbitrators who are assigned to decide disputes
34 with copies of, and instruction in, the provisions of the Federal
35 Trade Commission's regulations in Part 703 of Title 16 of the
36 Code of Federal Regulations as those regulations read on January
37 1, 1987, Division 2 (commencing with Section 2101) of the
38 Commercial Code, and this chapter.

39 (5) Requires the manufacturer, when the process orders, under
40 the terms of this chapter, either that the nonconforming motor

1 vehicle be replaced if the buyer consents to this remedy or that
2 restitution be made to the buyer, to replace the motor vehicle or
3 make restitution in accordance with paragraph (2) of subdivision
4 (d) of Section 1793.2.

5 (6) Provides, at the request of the arbitrator or a majority of the
6 arbitration panel, for an inspection and written report on the
7 condition of a nonconforming motor vehicle, at no cost to the
8 buyer, by an automobile expert who is independent of the
9 manufacturer.

10 (7) Takes into account, in rendering decisions, all legal and
11 equitable factors, including, but not limited to, the written warranty,
12 the rights and remedies conferred in regulations of the Federal
13 Trade Commission contained in Part 703 of Title 16 of the Code
14 of Federal Regulations as those regulations read on January 1,
15 1987, Division 2 (commencing with Section 2101) of the
16 Commercial Code, this chapter, and any other equitable
17 considerations appropriate in the circumstances. Nothing in this
18 chapter requires that, to be certified as a qualified third-party
19 dispute resolution process pursuant to this section, decisions of
20 the process must consider or provide remedies in the form of
21 awards of punitive damages or multiple damages, under subdivision
22 (e) of Section 1794, or of attorneys' fees under subdivision (d) of
23 Section 1794, or of consequential damages other than as provided
24 in subdivisions (a) and (b) of Section 1794, including, but not
25 limited to, reasonable repair, towing, and rental car costs actually
26 incurred by the buyer.

27 (8) Requires that no arbitrator deciding a dispute may be a party
28 to the dispute and that no other person, including an employee,
29 agent, or dealer for the manufacturer, may be allowed to participate
30 substantively in the merits of any dispute with the arbitrator unless
31 the buyer is allowed to participate also. Nothing in this subdivision
32 prohibits any member of an arbitration board from deciding a
33 dispute.

34 (9) Obtains and maintains certification by the Department of
35 Consumer Affairs pursuant to Chapter 9 (commencing with Section
36 472) of Division 1 of the Business and Professions Code.

37 (e) For the purposes of subdivision (d) of Section 1793.2 and
38 this section, the following terms have the following meanings:

1 (1) ~~“Noneconformity” means a noneconformity which substantially~~
2 ~~impairs the use, value, or safety of the new motor vehicle to the~~
3 ~~buyer or lessee.~~

4 (2) ~~“New motor vehicle” means a new motor vehicle that is~~
5 ~~bought or used primarily for personal, family, or household~~
6 ~~purposes. “New motor vehicle” also means a new motor vehicle~~
7 ~~with a gross vehicle weight under 10,000 pounds that is bought or~~
8 ~~used primarily for business purposes by a person, including a~~
9 ~~partnership, limited liability company, corporation, association,~~
10 ~~or any other legal entity, to which not more than five motor~~
11 ~~vehicles are registered in this state. “New motor vehicle” includes~~
12 ~~the chassis, chassis cab, and that portion of a motor home devoted~~
13 ~~to its propulsion, but does not include any portion designed, used,~~
14 ~~or maintained primarily for human habitation, a dealer-owned~~
15 ~~vehicle and a “demonstrator” or other motor vehicle sold with a~~
16 ~~manufacturer’s new car warranty but does not include a motoreycle~~
17 ~~or a motor vehicle which is not registered under the Vehicle Code~~
18 ~~because it is to be operated or used exclusively off the highways.~~
19 ~~A demonstrator is a vehicle assigned by a dealer for the purpose~~
20 ~~of demonstrating qualities and characteristics common to vehicles~~
21 ~~of the same or similar model and type.~~

22 (3) ~~“Motor home” means a vehicular unit built on, or~~
23 ~~permanently attached to, a self-propelled motor vehicle chassis,~~
24 ~~chassis cab, or van, which becomes an integral part of the~~
25 ~~completed vehicle, designed for human habitation for recreational~~
26 ~~or emergency occupancy.~~

27 (f) (1) ~~Except as provided in paragraph (2), no person shall sell,~~
28 ~~either at wholesale or retail, lease, or transfer a motor vehicle~~
29 ~~transferred by a buyer or lessee to a manufacturer pursuant to~~
30 ~~paragraph (2) of subdivision (d) of Section 1793.2 or a similar~~
31 ~~statute of any other state, unless the nature of the noneconformity~~
32 ~~experienced by the original buyer or lessee is clearly and~~
33 ~~conspicuously disclosed to the prospective buyer, lessee, or~~
34 ~~transferee, the noneconformity is corrected, and the manufacturer~~
35 ~~warrants to the new buyer, lessee, or transferee in writing for a~~
36 ~~period of one year that the motor vehicle is free of that~~
37 ~~noneconformity.~~

38 (2) ~~Except for the requirement that the nature of the~~
39 ~~noneconformity be disclosed to the transferee, paragraph (1) does~~
40 ~~not apply to the transfer of a motor vehicle to an educational~~

- 1 institution if the purpose of the transfer is to make the motor vehicle
- 2 available for use in automotive repair courses.

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